

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Keith Prieur et al.,

Plaintiffs,

**Hon. Hugh B. Scott**

04CV481A

v.

Report  
&  
Recommendation

Hilti, Inc. n/k/a Hilti Oklahoma Inc.;  
Hilti Corp. and  
Jeffrey Cervoni, individually and as an agent  
of Defendant Hilti, Inc..

Defendants.

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The defendants have filed a motion seeking to dismiss the complaint as against defendant Jeffrey Cervoni. (Docket No. 19). The defendants maintain that Cervoni was improperly joined as a party to this action and that he has no real connection to this case. The plaintiff does not oppose the dismissal of the complaint as against Cervoni. (Docket No. 27). Based on the above, it is recommended that the motion to dismiss the complaint as to defendant Cervoni be granted.

Pursuant to 28 USC §636(b)(1), it is hereby ordered that this Report & Recommendation be filed with the Clerk of the Court and that the Clerk shall send a copy of the Report & Recommendation to all parties.

**ANY OBJECTIONS to this Report & Recommendation must be filed with the Clerk of this Court within ten(10) days after receipt of a copy of this Report & Recommendation in accordance with 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, as well as WDNY Local Rule 72(a)(3).**

**FAILURE TO FILE OBJECTIONS TO THIS REPORT & RECOMMENDATION  
WITHIN THE SPECIFIED TIME, OR TO REQUEST AN EXTENSION OF TIME TO  
FILE OBJECTIONS, WAIVES THE RIGHT TO APPEAL ANY SUBSEQUENT ORDER  
BY THE DISTRICT COURT ADOPTING THE RECOMMENDATIONS CONTAINED  
HEREIN.** Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed2d 435 (1985); F.D.I.C. v. Hillcrest Associates, 66 F.3d 566 (2d. Cir. 1995); Wesolak v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988); see also 28 U.S.C. §636(b)(1), Rules 6(a), 6(e) and 72(b) of the Federal Rules of Civil Procedure, and WDNY Local Rule 72(a)(3).

Please also note that the District Court, on *de novo* review, will ordinarily refuse to consider arguments, case law and/or evidentiary material which could have been, but was not, presented to the Magistrate Judge in the first instance. See Patterson-Leitch Co. Inc. v. Massachusetts Municipal Wholesale Electric Co., 840 F.2d 985 (1st Cir. 1988).

Finally, the parties are reminded that, pursuant to WDNY Local Rule 72.3(a)(3), “written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority.” **Failure to comply with the provisions of Rule 72.3(a)(3) may result in the District Court’s refusal to consider the objection.**

So Ordered.

/s/ Hugh B. Scott

United States Magistrate Judge  
Western District of New York

Buffalo, New York  
January 30, 2007